Supreme Court, U.S.
FILED
AUG 14 1995
OFFICE OF THE CLERK

(2)

No. 95-67

In The

Supreme Court of the United States

October Term, 1995

FORD LIFE INSURANCE COMPANY,

Petitioner,

v.

JOYCE MILLER,
Administratrix for the Estate of Mearl M. Miller,

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of Alabama

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JOHN PATRICK COURTNEY, III
LYONS, PIPES & COOK, P.C.
2 North Royal Street
Post Office Box 2727
Mobile, AL 36652
(334) 432-4481

Attorney for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

21 pp

QUESTION PRESENTED

Whether the Petitioner/credit life insurer can raise a due process and/or an *ex post facto* challenge to a decision of the Supreme Court of Alabama partially reversing summary judgment which had been entered by the Circuit Court of Mobile County in favor of the Petitioner on the Respondent/insured's breach of contract and bad faith claims on the grounds that a trial on the merits exposes the Petitioner to the *possibility* that punitive damages *may* be imposed against it?

TABLE OF CONTENTS

Page

QUESTION PRESENTED..... i

TABLE OF AUTHORITIES..... iii

STATEMENT OF THE CASE..... 1

SUMMARY OF ARGUMENT..... 5

REASONS FOR DENYING THE WRIT..... 6

I. THE PETITIONER'S DUE PROCESS CHALLENGE IS NOT RIPE SINCE NO PUNITIVE DAMAGES HAVE BEEN IMPOSED AGAINST THE PETITIONER..... 6

II. PRE-JUDGMENT REVIEW OF THE ISSUE DECIDED BY THIS COURT IN *PACIFIC MUTUAL LIFE INSURANCE COMPANY V. HASLIP*, 499 U.S. 1 (1991), IS NOT WARRANTED..... 8

III. THE ALABAMA SUPREME COURT'S DECISION REPRESENTS NOTHING MORE THAN ADHERENCE TO THE PRINCIPLE THAT AN INSURER CANNOT RELY UPON *ALABAMA CODE* 1975, §27-14-7 AS A BASIS FOR REFUSING TO PAY AN INSURANCE CLAIM IF THE INSURER'S AGENT WAS RESPONSIBLE FOR THE "MISREPRESENTATION" ON THE APPLICATION FOR COVERAGE OR WAS AWARE OF THE TRUE FACTS..... 11

IV. THE *EX POST FACTO* CLAUSE OF THE UNITED STATES CONSTITUTION DOES NOT APPLY TO THE ALABAMA SUPREME COURT'S DECISION..... 14

CONCLUSION..... 15

TABLE OF AUTHORITIES

Page

CASES:

Aetna Life Insurance Company v. Lavoie, 475 U.S. 813 (1986) 7

Banker's Trust Company v. Blodgett, 260 U.S. 647 (1923) 14

Brockett v. Spokane Arcades, Inc., 472 U.S. 491 (1985) 7

Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc., 492 U.S. 257 (1989) 6

Calder v. Bull, 3 U.S. (3 Dall.) 386 (1798) 14

Day v. Woodworth, 54 U.S. (13 How.) 363 (1852) 7

Duren v. Northwest National Life Insurance Company, 581 So.2d 810 (Ala. 1991) 3, 11

Ford Life Insurance Co. v. Jones, 262 Ark. 881, 563 S.W.2d 399 (1978) 4, 12, 13

Frank v. Mangum, 237 U.S. 309 (1915) 14

Galvin v. Press, 347 U.S. 522 (1954) 14

Green Oil Co. v. Hornsby, 539 So.2d 218 (1989) 10

Hammond v. Gadsden, 493 So.2d 1374 (1986) 10

Harisiades v. Shaughnessy, 342 U.S. 580 (1952) 14

Hutto v. Bic Corporation, 800 F. Supp. 1367 (E.D. Va. 1992) 6

Johannessen v. United States, 225 U.S. 227 (1912) 14

Louis Pizitz Dry Goods Company, Inc. v. Yeldell, 274 U.S. 112 (1927) 7

TABLE OF AUTHORITIES – Continued

Page

Lyng v. Northwest Indian Cemetery Protective Association, 485 U.S. 439 (1988) 7

Marks v. United States, 430 U.S. 188 (1977) 14

Miller v. Dobbs Mobile Bay, ___ So.2d ___, No. 1921552 (Ala. February 24, 1995) 4, 5, 11, 13

Minneapolis and St. Louis Railway Company v. Beckwith, 129 U.S. 26 (1889) 7

National Life and Accident Insurance Company v. Allen, 285 Ala. 551, 234 So.2d 567 (1970) 3

Pacific Mutual Life Insurance Company v. Haslip, 499 U.S. 1 (1991) 6, 8, 9, 10, 11

Rosenbloom v. Metromedia, Inc., 403 U.S. 29 (1971) 7

Ross v. Oregon, 227 U.S. 150 (1913) 14

Southern United Life Insurance v. Caves, 481 So. 2d 764 (Miss. 1985) 13

Spector Motor Service v. McLaughlin, 323 U.S. 101 (1944) 8

Standard Oil Company v. Missouri, 224 U.S. 270 (1912) 7

Transflock, Inc. v. United States, 765 F.Supp. 750 (C.I.T. 1991) 6

TXO Production Corp. v. Alliance Resources Corp., 509 U.S. ___, 113 S.Ct. 2711 (1993) 6

Walker v. Whitehead, 83 U.S. (16 Wall.) 314 (1872) 14

TABLE OF AUTHORITIES – Continued

Page

Watson v. Mercer, 33 U.S. (8 Pet.) 88 (1834) 14

Williamson Planning Commission v. Hamilton Bank, 473 U.S. 172 (1985) 7

STATUTES:

Alabama Code 1975, § 27-14-7 ..... 2, 3, 5, 11, 12, 13

Alabama Code 1975, § 5-19-20 1

STATEMENT OF THE CASE

Petitioner's Statement of the Facts is misleading in that it glosses over the following key facts which led to the Alabama Supreme Court's decision:

(1) Mearl Miller (the decedent) fully explained his health condition (i.e., emphysema) to Petitioner Ford Life Insurance Company's (hereinafter "Ford Life" or "Petitioner") sales agent before Ford Life issued the policy (C 162, 164, 563-65, 577, 579-80, 1109-10);

(2) The Ford Life agent repeatedly assured Mr. Miller (and Howard and Paula Goss, his son-in-law and daughter) that, despite Mr. Miller's emphysema, the Ford Life credit life insurance policy would pay if Mr. Miller should die during the term of the loan (C 490, 519-21, 1109-10);

(3) Mr. Miller told Ford Life's agent that he did not want to purchase credit life insurance and, in response, Ford Life's agent repeatedly told him that he had to purchase the credit life insurance if he wanted to purchase the car[1] (C 162, 164, 563-65, 567, 577, 579-80);

---

[1] *Alabama Code* §5-19-20(a) (1975) provides, in pertinent part:

> With respect to any credit transaction, *the creditor shall not require any insurance other than insurance against loss of or damage to any property in which the creditor is given a security interest and insurance insuring the lien of the creditor on the property which is collateral for said transaction.* Credit life and disability and involuntary unemployment compensation insurance and, if

(4) Immediately prior to signing the insurance application form, Mr. Miller directly questioned whether he should sign this statement in light of his emphysema and was told by Ford Life's agent – "we [won't] worry about the fact that [you are] not well" (C 567, 1109-10);

(5) Ford Life never gave Mr. Miller any reason to suspect that the policy would not pay benefits as represented when Ford Life took its exorbitant premium from him;

(6) Ford Life did no underwriting until *after* Mr. Miller's death from lung cancer (not emphysema) almost one year after he bought the "coverage" and that post-death or "reverse" underwriting did not reveal any facts which were not revealed by Mr. Miller prior to the issuance of the policy; and

(7) Ford Life's agents were told not to relay information they learned about an applicant's health to Ford Life so that Ford Life could (theoretically) deny such claims with impunity.

Although technically correct, the Decision Below portion of the Petition is misleading in that it overlooks the emphasis the Alabama Supreme Court placed upon the facts outlined above and how those facts place this case within the well-settled exception to *Alabama Code* 1975, §27-14-7. In discussing this, the court stated:

---

accepted, may be provided by the creditor. . . . (emphasis added).

The trial court held that Mr. Miller had misrepresented his health condition to Ford Life and, therefore, that his estate could not recover. Although we are aware that Mr. Miller signed a certificate stating that he was in good health, even though he was not in good health, the facts alleged in this case take it out of the ordinary situation. Here, the evidence, viewed most favorably to Mr. Miller, indicates that *Mr. Miller never contended that he was in good health. In fact, he told the Treadwell salesman and the Ford Life representative that he did not want the credit life coverage, because he was sick.* Mrs. Miller presented evidence that *Mr. Miller purchased the insurance only after the Ford Life representative had insisted that his poor health would not be a problem.*

It is well settled that an insurance company cannot defend its refusal to pay benefits on the grounds that the insured made a misrepresentation on the application if the misrepresentation was the fault of the agent and that fault was without participation by the insured. *National Life and Accident Insurance Company v. Allen,* 285 Ala. 551, 234 So.2d 567 (1970). *Moreover, Alabama Code 1975, §27-14-7, does not apply where there has been no concealment by the insured. Duren v. Northwest National Life Insurance Company,* 581 So.2d 810 (Ala. 1991).

Viewing the record most favorably to Mrs. Miller, *we find no misrepresentations or fraudulent statements made by Mr. Miller to the Ford Life representative.* A jury could find that he told everyone he was sick and that he did not want the credit life insurance coverage and that he did not conceal his poor health from anyone.

> The jury could find that the only misrepresentation made by Mr. Miller came when he signed a good health certificate. However, the jury could find that that misrepresentation was made at the insistence of the Ford Life representative.

Miller v. Dobbs Mobile Bay, ___ So.2d ___, No. 1921552 (Ala. February 24, 1995) (Appendix A of Petitioner's Brief, pp. 6a-7a.) (emphasis added).

The Alabama Supreme Court went on to reject Ford Life's attempt to hide behind the assertion that the representative who successfully duped Mr. Miller into buying worthless "insurance" was merely a "soliciting agent" by stating:

> Under these specific facts, we hold that Ford Life cannot defend its refusal to pay on the basis that its agent did not have the authority to bind it.
>
> As stated by the Arkansas Supreme Court in a case factually similar to this one:
>
> > Obviously the agent is encouraged to sell insurance, which is Ford Life's business, and paid a handsome commission [approximately 60% in the case at bar]. Everyone is satisfied until the death of the insured when it may be learned that he was not "in good health."
> >
> > Such a situation puts an unrealistic burden on an insured which can only result in a decided advantage enuring to the benefit of the company.
>
> *Ford Life Insurance Co. v. Jones*, 262 Ark. 881, 886, 563 S.W.2d 399, 402 (1978).

Miller v. Dobbs Mobile Bay, ___ So.2d ___, No. 1921552 (Ala. February 24, 1995) (Appendix A of Petitioner's Brief, pp. 7a-8a.)

SUMMARY OF ARGUMENT

The Petition should be denied because:

(1) It attempts to raise constitutional issues which are not ripe for this Court's consideration (i.e., punitive damages which have not yet been entered against Petitioner);

(2) It attempts to raise an issue (i.e., whether Alabama's system of awarding punitive damages and reviewing punitive damage awards violates the Fourteenth Amendment's Due Process Clause) which this Court recently reviewed and declared constitutionally sound;

(3) No federal law issue is presented as the Alabama Supreme Court decision merely reaffirmed its continued adherence to the well-settled and understandable state law principle that an insurer cannot rely on *Alabama Code* 1975, §27-14-7 as a basis for denying coverage if the insurer's agent is responsible for the "misrepresentation" or if the insurer is made fully aware of the true facts alleged to have been "misrepresented"; and

(4) The *ex post facto* clause does not apply to the Alabama Supreme Court's decision.

REASONS FOR DENYING THE WRIT

I. THE PETITIONER'S DUE PROCESS CHALLENGE IS NOT RIPE SINCE NO PUNITIVE DAMAGES HAVE BEEN IMPOSED AGAINST THE PETITIONER.

Simply stated, Ford Life is asking this Court to take up the issue of whether a punitive damage award which may be entered against it upon the trial of this case violates the Fourteenth Amendment's Due Process Clause. That issue is not ripe for review.

The Respondent was unable to locate a single decision wherein this Court has held that a due process challenge to a potential punitive damage award is ripe prior to the imposition of such damages.[2] Every decision by this Court addressing whether a particular state's punitive damages system was constitutional involved punitive damages which had been assessed.[3] This is not

---

[2] The Respondent was able to locate a district court decision and a decision of the United States Court of International Trade explicitly recognizing that due process challenges to punitive damage awards are premature prior to the actual imposition of a punitive damage award against the complaining party. *Hutto v. Bic Corporation*, 800 F. Supp. 1367 (E.D. Va. 1992); *Transflock, Inc. v. United States*, 765 F. Supp. 750 (C.I.T. 1991).

[3] For example: *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. ___, 113 S. Ct. 2711 (1993) (holding that punitive damage award of $10,000,000 against oil and gas developer was not "grossly excessive" as to violate due process, even though actual damage award was only $19,000); *Pacific Mutual Life Insurance Company v. Haslip*, 499 U.S. 1 (1991) (holding that a punitive damages award of over $800,000 against an insurer whose agent defrauded an insured was not excessive and did not violate the insurer's due process rights); *Browning-Ferris*

surprising given the fact that any such review undertaken prior to the actual imposition of punitive damages would violate the fundamental principle that constitutional questions are not to be considered unless and until such adjudication is unavoidable. *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439, 445 (1988); *Williamson Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985); *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491,

---

Industries of Vt., Inc. v. Kelco Disposal, Inc., 492 U.S. 257 (1989) (rejecting a claim that punitive damages awarded in a civil case could violate the Eighth Amendment and refusing to consider the tardily raised due process argument); *Aetna Life Insurance Company v. Lavoie*, 475 U.S. 813 (1986) (vacating the Alabama Supreme Court's decision affirming a $3.5 million jury award for punitive damages in a bad faith case on the grounds that one of the justices should have recused himself from the case – although the court did not reach the Eighth Amendment and due process clause of the Fourteenth Amendment issues, these issues were raised on appeal); *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29 (1971) (reversing a punitive damage award in a defamation case); *Louis Pizitz Dry Goods Company, Inc. v. Yeldell*, 274 U.S. 112 (1927) (affirming a punitive damages verdict entered in a wrongful death action); *Standard Oil Company v. Missouri*, 224 U.S. 270 (1912) (affirming a $50,000 fine levied against a corporation which was found to have misused its license to do business in the state); *Minneapolis and St. Louis Railway Company v. Beckwith*, 129 U.S. 26 (1889) (affirming a punitive damage award against a railway corporation which neglected to pay for stock injured or killed for want of a fence on the side of its railway and specifically holding that the allowance of such punitive damages was not in conflict with the Fourteenth Amendment – the Respondent found numerous such cases affirming similar damage statutes but, for purposes of brevity, these are not cited herein); *Day v. Woodworth*, 54 U.S. (13 How.) 363 (1852) (approving the common-law method for assessing punitive damages; albeit in a case decided before the adoption of the Fourteenth Amendment).

501 (1985); *Spector Motor Service v. McLaughlin*, 323 U.S. 101, 105 (1944).

Based on the foregoing, the Plaintiffs' due process challenge is not ripe for decision.

II. PRE-JUDGEMENT REVIEW OF THE ISSUE DECIDED BY THIS COURT IN *PACIFIC MUTUAL LIFE INSURANCE COMPANY V. HASLIP*, 499 U.S. 1 (1991), IS NOT WARRANTED.

Ford Life contends that a trial would deprive it of its right to due process since "it is a veritable certainty that any claim requesting punitive damages against an out-of-state insurer, if presented to an Alabama jury, will result in an adverse verdict, irrespective of the validity of the claim upon which the request for punitive damages is premised." The Petitioner offers no support for this absurd statement.

In *Pacific Mutual Life Insurance Company v. Haslip*, 499 U.S. 1 (1991), this Court held that Alabama's method for instructing juries on punitive damages combined with Alabama's established post-trial procedures for scrutinizing punitive damage awards satisfy the requirements of the Fourteenth Amendment's Due Process Clause. In so holding, this Court stated:

> [The jury] instructions, we believe, reasonably accommodated Pacific Mutual's interest in rational decision making and Alabama's interest in meaningful individualized assessment of appropriate deterrence and retribution. The discretion allowed under Alabama law in determining punitive damages is no greater than that pursued in many familiar areas of the law. . . . As

> long as the discretion is exercised within reasonable constraints, due process is satisfied.
>
> * * *
>
> By its review of punitive awards, the Alabama Supreme Court provides an additional check on the jury's or trial court's discretion. It first undertakes a comparative analysis. It then applies the detailed substantive standards it has developed for evaluating punitive awards.
>
> * * *
>
> The application of these standards, we conclude, imposes a sufficiently definite and meaningful constraint on the discretion of Alabama fact finders in awarding punitive damages. The Alabama Supreme Court's post-verdict review insures that punitive damages awards are not grossly out of proportion to the severity of the offense and have some understandable relationship to compensatory damages.
>
> * * *
>
> These standards have real effect when applied by the Alabama Supreme Court to jury awards . . . And post-verdict review by the Alabama Supreme Court has resulted in reduction of punitive damage awards. The standards provide for a rational relationship in determining whether a particular award is greater than reasonably necessary to punish and deter.

Haslip, 499 U.S. 19-24 (emphasis added) (citations omitted).

As this Court recognized in *Haslip*, the instructions which will be given to the jury will not give the jury

unlimited discretion in awarding punitive damages. Furthermore, as this Court also recognized in *Haslip*, even if a jury were to award a large amount of punitive damages, Alabama has in place constitutionally sound post-trial and appellate procedures for scrutinizing and, if necessary, reducing the size of punitive damage awards. *Green Oil Co. v. Hornsby*, 539 So.2d 218 (1989); *Hammond v. Gadsden*, 493 So.2d 1374 (1986).

The soundness of Alabama's system is best demonstrated by a review of the "exhaustive survey of punitive damages in Alabama" submitted as Appendix E to the Petition. The survey contains 131 cases in which a jury has awarded punitive damages since 1991 (i.e. since this Court's decision in *Haslip*). Of these cases, 24 involved punitive damage awards of over $5,000,000. In 13 of these 24 cases, the defendant(s) followed through with challenging the punitive damages awarded. Appeals and post-trial motions remain pending in 5 of those 13 cases. In all 8 cases in which the appeal and/or post-trial motions have been decided, the punitive damage awards were either remitted or a new trial was ordered. This hardly paints a picture of a punitive damage system which is out of control.

Based on the foregoing, there is absolutely no justification for this Court to revisit the issues decided in *Haslip* at this juncture.

III. THE ALABAMA SUPREME COURT'S DECISION REPRESENTS NOTHING MORE THAN ADHERENCE TO THE PRINCIPLE THAT AN INSURER CANNOT RELY UPON *ALABAMA CODE* 1975, §27-14-7 AS A BASIS FOR REFUSING TO PAY AN INSURANCE CLAIM IF THE INSURER'S AGENT WAS RESPONSIBLE FOR THE "MISREPRESENTATION" ON THE APPLICATION FOR COVERAGE OR WAS AWARE OF THE TRUE FACTS.

The Petitioner correctly notes that *Alabama Code* 1975, §27-14-7 provides a basis for denial of recovery under an insurance policy where the insured commits fraud in the application for coverage. However, as pointed out by the Alabama Supreme Court in their analysis of this case:

> *Alabama Code* 1975, §27-14-7, does not apply where there has been no concealment by the insured. *Duren v. Northwest National Life Insurance Company*, 581 So.2d 810 (Ala. 1991).

Miller v. Dobbs Mobile Bay, ___ So.2d ___, No. 1921552 (Ala. February 24, 1995) (Appendix A of Petition, p. 6a) (emphasis added). Mr. Miller fully explained his medical problem to Ford Life's agent, identified his physician, and, in response, was repeatedly assured that he would be fully covered. In short, Mr. Miller did not conceal anything. The only misrepresentations occurred when Ford Life's agent assured Mr. Miller that his health was not a problem and that he had to purchase the credit life insurance. Furthermore, the evidence in the case at bar reveals that such actions are an established sales technique of Ford Life's agents, who earn exorbitant commissions (60%) for such "sales."

Ford Life continues to argue that Mr. Miller's candid disclosure should count for nothing since the Ford Life representative he was dealing with was purportedly merely a "soliciting agent." Ford's Life "disclaimer" of its agent's actions and knowledge is not novel. Ford Life attempted to use a similar tactic to deny coverage in *Ford Life Insurance Co. v. Jones*, 262 Ark. 881, 563 S.W.2d 399 (Ark. 1978) and in at least six other fraud/bad faith cases against Ford Life in Alabama, most of which have been settled by Ford Life on a confidential basis with Ford Life paying to obtain dismissal for its sales agent as well as itself. In *Ford Life Insurance Co. v. Jones*, 262 Ark. 881, 563 S.W.2d 399 (Ark. 1978), as here, the undisputed evidence revealed that the decedent candidly and in detail disclosed his health problems to Ford Life's agent and, at the insistence of the sales agent, signed the application which contained a "good health" statement. *Id.* at 401. Ford Life claimed that, under an Arkansas statute virtually identical to *Alabama Code* 1975, §27-14-7, the policy was void as a result of this "incorrect statement." *Id.* In rejecting this contention, the Arkansas Supreme Court first stressed that *"Ford Life has a policy of not inquiring of an insured's health until a claim is made." Id.* at 402 (emphasis added). As such, the court concluded that:

> Such a statement on such a form should not be used as a defense to liability *when, in fact, it is undisputed that there was no misrepresentation or fraudulent statement.*

Id. (emphasis added).

Ford Life *chooses* not to be advised of the health information made available to it by its insured so that it

can claim ignorance of such information when it (predictably) refuses to pay. The Alabama Supreme Court quoted with approval the following language from the Arkansas Supreme Court's decision:

> Obviously, the agent is encouraged to sell insurance, which is Ford Life's business, and paid a handsome commission. Everyone is satisfied until the death of the insured when it may be learned that he was not "in good health."
>
> Such a situation puts an unrealistic burden on an insured which can only result in a decided advantage enuring to the benefit of the company.

Miller v. Dobbs Mobile Bay, ___ So.2d ___, No. 1921552 (Ala. February 24, 1995) (Appendix A of Petition, p. 8a; quoting *Ford Life Insurance Company v. Jones*, 563 S.W.2d 399, 402 (1978)).

In further support of its holding, the Alabama Supreme Court discussed the Mississippi's Supreme Court's decision in *Southern United Life Insurance v. Caves*, 481 So.2d 764 (Miss. 1985). In *Caves, supra*, the Mississippi Supreme Court held that the insurance agent's knowledge of the applicant's heart condition, which he failed to communicate to the insurer (because he was not required to convey it), was nonetheless imputed to the insurer who, it was determined, denied the claim in bad faith.

The Alabama Supreme Court correctly held that Ford Life, and others who choose to market credit life insurance in Alabama, cannot employ *Alabama Code* 1975, §27-14-7 as a means of allowing their so-called "soliciting agents" to defraud Alabama citizens into purchasing

worthless credit life insurance or as a basis of failing to pay claims which are due to be paid as a matter of law.

IV. THE *EX POST FACTO* CLAUSE OF THE UNITED STATES CONSTITUTION DOES NOT APPLY TO THE ALABAMA SUPREME COURT'S DECISION.

It is well settled that the *ex post facto* clause of the United States Constitution (Article I, §10) applies solely to legislative acts; not to judicial decisions. *Marks v. United States*, 430 U.S. 188 (1977); *Frank v. Mangum*, 237 U.S. 309 (1915); *Ross v. Oregon*, 227 U.S. 150 (1913); *Calder v. Bull*, 3 U.S. (3 Dall.) 386 (1798). It is equally well settled that only criminal laws are subject to the *ex post facto* clause of the United States Constitution. *Galvin v. Press*, 347 U.S. 522 (1954); *Harisiades v. Shaughnessy*, 342 U.S. 580 (1952); *Banker's Trust Company v. Blodgett*, 260 U.S. 647 (1923); *Johannessen v. United States*, 225 U.S. 227 (1912); *Walker v. Whitehead*, 83 U.S. (16 Wall.) 314 (1872); *Watson v. Mercer*, 33 U.S. (8 Pet.) 88 (1834); *Calder v. Bull*, 3 U.S. (3 Dall.) 386 (1798).

Since Petitioner is attacking a judicial decision in a civil matter rather than a legislative act concerning a criminal offense, the Petitioner's assertion that the Supreme Court of Alabama's decision somehow violates the *ex post facto* clause lacks merit.

CONCLUSION

The Petition for a Writ of Certiorari should be denied and Respondent requests an award of attorney's fees and expenses caused her by the filing of the Petition.

Respectfully submitted,

JOHN PATRICK COURTNEY, III
LYONS, PIPES & COOK, P.C.
2 North Royal Street
Post Office Box 2727
Mobile, AL 36652
(334) 432-4481

Attorney for Respondent